

House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 54

HOUSE BILL 2253

AN ACT

AMENDING SECTIONS 41-311, 41-312, 41-313, 41-319, 41-323, 41-327, 41-330 AND 41-331, ARIZONA REVISED STATUTES; RELATING TO NOTARIES PUBLIC.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-311, Arizona Revised Statutes, is amended to
3 read:

4 41-311. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Acknowledgment" means a notarial act in which a notary certifies
7 that a signer, whose identity is proven by satisfactory evidence, appeared
8 before the notary and acknowledged that the signer signed the document.

9 2. "Commission" means to authorize to perform notarial acts and the
10 written authority to perform those acts.

11 3. "Copy certification" means a notarial act in which the notary
12 certifies that the notary has made a photocopy of an original document that
13 is neither a public record nor publicly recordable.

14 4. "Identity is personally known" means familiarity with an individual
15 resulting from interactions with that person over a sufficient time to
16 eliminate reasonable doubt that the individual has the identity claimed.

17 5. "Incomplete document" means a document that has not been signed
18 where a signature line is provided or where other obvious blanks appear in
19 the document OR THAT LACKS A NOTARIAL CERTIFICATE.

20 6. "Jurat" means a notarial act in which the notary certifies that a
21 signer, whose identity is proven by satisfactory evidence, has made in the
22 notary's presence a voluntary signature and has taken an oath or affirmation
23 vouching for the truthfulness of the signed document.

24 7. "Notarial act" or "notarization" means any act that a notary is
25 authorized to perform under section 41-313.

26 8. "Notarial certificate" or "certificate" means the part of or
27 attachment to a notarized document for completion by the notary that bears
28 the notary's signature and seal AND STATES THE FACTS THAT ARE ATTESTED BY THE
29 NOTARY IN A PARTICULAR NOTARIZATION.

30 9. "Notary public" or "notary" means any person commissioned to
31 perform notarial acts under this article.

32 10. "Oath" or "affirmation" means a notarial act or part of a notarial
33 act in which a person made a vow in the presence of the notary under penalty
34 of perjury, with reference made to a supreme being in the case of an oath.

35 11. "Satisfactory evidence of identity" means that proof is evidenced
36 by one of the following:

37 (a) At least one current form of identification issued by THE UNITED
38 STATES GOVERNMENT OR a ~~federal~~, state or tribal government with the
39 individual's photograph, signature and physical description. The
40 individual's physical description contained in the form of identification
41 shall be written and shall include at a minimum a description of the
42 individual's height, weight, color of hair and color of eyes.

43 (b) The oath or affirmation of a credible person who is personally
44 known to the notary and who personally knows the individual.

1 (c) The oath or affirmation of a credible person who personally knows
2 the individual and who provides satisfactory evidence of identity pursuant
3 to subdivision (a) of this subsection PARAGRAPH.

4 (d) Personal knowledge of the individual by the notary.

5 Sec. 2. Section 41-312, Arizona Revised Statutes, is amended to read:

6 41-312. Appointment; term; oath and bond

7 A. The secretary of state may appoint notaries public in each county
8 to hold office for four years who shall have jurisdiction in the county in
9 which they reside and in which they are appointed. Acknowledgments of
10 documents may be taken and executed and oaths may be administered by a notary
11 public in any county of the state although the commission is issued to the
12 notary public in and for another county.

13 B. The secretary of state shall transmit the commission of the person
14 appointed as notary public to the clerk of the superior court in the county
15 for which the notary was appointed. The clerk shall give notice of the
16 appointment to the person appointed who shall TAKE, within twenty days after
17 receiving such notice, take the oath prescribed by law and give a bond to the
18 state, with sureties approved by the clerk, in an amount prescribed by the
19 secretary of state and file it with the clerk. Upon filing the official oath
20 and bond the clerk shall deliver the commission to such person and give
21 notice to the secretary of state of the time and filing of the oath and bond.

22 C. A notary public is a public officer commissioned by this state and
23 the following apply without regard to whether the notary public's employer
24 or any other person has paid the fees and costs for the commissioning of the
25 notary public, including costs for the official seal and journals:

26 1. A notary public's official seal and commission and any journal that
27 contains only public record entries remain the property of the notary public.

28 2. A notary public may perform notarizations outside the workplace of
29 the notary's employer except during those times normally designated as the
30 notary public's hours of duty for that employer. All fees received by a
31 notary public for notarial services provided while not on duty remain the
32 property of the notary public.

33 3. An employer of a notary public shall not limit the notary public's
34 services to customers or other persons designated by the employer.

35 D. A notary public shall continue to serve until the notary public's
36 commission expires, the notary public resigns the commission, the notary
37 public dies or the secretary of state revokes the commission. An employer
38 may not cancel the notary bond or notary commission of any notary public who
39 is an employee and who leaves that employment.

40 E. A notary public shall comply with all of the following:

41 1. Be at least eighteen years of age.

42 2. Be a resident of this state for income tax purposes and claim the
43 individual's residence in this state as the individual's primary residence
44 on state and federal tax returns.

1 3. Except as provided in section 41-330, subsection A, paragraph 2,
2 never have been convicted of a felony.

3 4. KEEP AS A REFERENCE A MANUAL THAT IS APPROVED BY THE SECRETARY OF
4 STATE THAT DESCRIBES THE DUTIES, AUTHORITY AND ETHICAL RESPONSIBILITIES OF
5 NOTARIES PUBLIC.

6 F. An applicant for appointment and commission as a notary public
7 shall complete an application form prescribed by the secretary of state.
8 Except for the applicant's name and business address, all information on the
9 application is confidential and may not be disclosed to any person other than
10 the applicant, the applicant's personal representative or an employee or
11 officer of the federal, state or local government who is acting in an
12 official capacity. The secretary of state shall use the information
13 contained on the application only for carrying out the purposes of this
14 article.

15 G. The state or any of its political subdivisions may pay the fees and
16 costs for the commissioning of a notary public who is an employee of this
17 state or any of its political subdivisions AND who performs notarial services
18 in the course of the notary public's employment or for the convenience of
19 public employees.

20 Sec. 3. Section 41-313, Arizona Revised Statutes, is amended to read:

21 41-313. Duties

22 A. Notaries public shall perform the following notarial acts, when
23 requested:

24 1. Take acknowledgments and give certificates of the acknowledgments
25 endorsed on or attached to the instrument.

26 2. Administer oaths and affirmations.

27 3. Perform jurats.

28 4. Perform copy certification.

29 B. Notaries public shall:

30 1. Keep, maintain and protect as a public record a journal of all
31 official acts performed by the notary as described in section 41-319.

32 2. Provide and keep the official seal that is imprinted in dark ink
33 with the words "notary public", the name of the county in which the notary
34 is commissioned, the name of the notary as it appears on the notarial
35 application, the great seal of the state of Arizona and the expiration date
36 of the notarial commission.

37 3. Authenticate with the official seal all official acts, and affix
38 the date of the expiration of the notary's commission as the notary on every
39 certificate or acknowledgment signed and sealed by the notary.

40 4. RESPOND TO ANY REQUESTS FOR INFORMATION AND COMPLY WITH ANY
41 INVESTIGATIONS THAT ARE INITIATED BY THE SECRETARY OF STATE OR THE ATTORNEY
42 GENERAL.

1 Sec. 4. Section 41-319, Arizona Revised Statutes, is amended to read:
2 41-319. Journal

3 A. The notary shall keep a paper journal and, except as prescribed by
4 subsection ~~D~~ E, shall keep only one journal at a time. The notary shall
5 record all notarial acts in chronological order. The notary shall furnish,
6 when requested, a certified copy of any public record in the notary's
7 journal. Records of notarial acts that violate the attorney-client privilege
8 or that are confidential pursuant to federal or state law are not A public
9 record. Each journal entry shall include at least:

10 1. The date of the notarial act.

11 2. A description of the document or type of notarial act.

12 3. The printed full name, signature and address of each person for
13 whom a notarial act is performed.

14 4. The type of satisfactory evidence of identity presented to the
15 notary by each person for whom a notarial act is performed, if other than the
16 notary's personal knowledge of the individual is used as satisfactory
17 evidence of identity.

18 5. A description of the identification document, its serial or
19 identification number and its date of issuance or expiration.

20 6. The fee, if any, charged for the notarial act.

21 B. If a notary has personal knowledge of the identity of a signer, the
22 requirements of subsection A, paragraphs 1 through 5 may be satisfied by the
23 notary retaining a paper or electronic copy of the notarized documents for
24 each notarial act.

25 C. If a notary does more than one notarization for an individual
26 within a six month period, the notary shall have the individual provide
27 satisfactory evidence of identity the first time the notary performs the
28 notarization for the individual but may not require satisfactory evidence of
29 identity or the individual to sign the journal for subsequent notarizations
30 performed for the individual during the six month period.

31 D. If a notary performs more than one notarization of the same type
32 for a signer either on like documents or within the same document and at the
33 same time, the notary may group the documents together and make one journal
34 entry for the transaction.

35 E. If one or more entries in a notary public's journal are not public
36 records, the notary public may keep one journal that contains entries that
37 are not public records and one journal that contains entries that are public
38 records. A notary public's journal that contains entries that are not public
39 records is the property of the employer of that notary public and shall be
40 retained by that employer if the notary public leaves that employment. A
41 notary public's journal that contains only public records is the property of
42 the notary public without regard to whether the notary public's employer
43 purchased the journal or provided the fees for the commissioning of the
44 notary public.

1 F. Except as provided in subsections A and ~~D~~ E, the notary's journal
2 is a public record that may be viewed by or copied for any member of the
3 public, but only upon presentation to the notary of a written request that
4 details the month and year of the notarial act, the name of the person whose
5 signature was notarized and the type of document or transaction.

6 Sec. 5. Section 41-323, Arizona Revised Statutes, is amended to read:

7 41-323. Change of address; lost journal or seal; civil penalty

8 A. Within thirty days after the change of a notary's mailing or
9 residential address, the notary shall deliver to the secretary of state, by
10 certified mail or other means providing a receipt, a signed notice of the
11 change that provides both the old and new addresses.

12 B. Within ten days after the loss or theft of an official journal or
13 seal, the notary shall deliver to the secretary of state, by certified mail
14 or other means providing a receipt, a signed notice of the loss or
15 theft. The notary also shall inform the appropriate law enforcement agency
16 in the case of theft.

17 C. If a notary fails to comply with subsection A or B, THE NOTARY HAS
18 FAILED TO FULLY AND FAITHFULLY DISCHARGE THE DUTIES OF A NOTARY AND the
19 secretary of state may impose a civil penalty of twenty-five dollars against
20 the notary. The notary shall pay any civil penalty imposed by the secretary
21 of state pursuant to this subsection prior to the renewal of the notary's
22 commission.

23 Sec. 6. Section 41-327, Arizona Revised Statutes, is amended to read:

24 41-327. Name change; new commission

25 A. A notary public who has a change of surname due to marriage may
26 continue to use the official seal and commission in the notary public's prior
27 name until that commission expires. While using a married name in
28 notarizations, the notary shall sign the married name on the line that is
29 designated for the notary public's signature on the notarial certificate.
30 Immediately below that signature, the notary public shall sign the name under
31 which the notary was commissioned. The notary public shall notify the
32 secretary of state's office within thirty days of the notary's change of
33 surname due to marriage. FAILURE TO NOTIFY THE SECRETARY OF STATE OF THIS
34 CHANGE OF SURNAME IS EVIDENCE OF THE NOTARY'S FAILURE TO FULLY AND FAITHFULLY
35 DISCHARGE THE DUTIES OF A NOTARY.

36 B. Except as prescribed by subsection A, a notary public whose name
37 changes shall apply for a new notary commission under the new name.

38 Sec. 7. Section 41-330, Arizona Revised Statutes, is amended to read:

39 41-330. Grounds for refusal, revocation or suspension of
40 commission

41 A. The secretary of state may refuse to appoint any person as a notary
42 public or may revoke OR SUSPEND the commission of any notary public for any
43 of the following reasons:

1 1. Substantial and material misstatement or omission in the
2 application for a notary public commission that is submitted to the secretary
3 of state.

4 2. Conviction of a felony unless restored to civil rights, or of a
5 lesser offense involving moral turpitude or of a nature that is incompatible
6 with the duties of a notary public. A conviction after a plea of no contest
7 is deemed to be a conviction for purposes of this paragraph.

8 3. Revocation, suspension, restriction or denial of a professional
9 license if that action was for misconduct, dishonesty or any cause that
10 substantially relates to the duties or responsibilities of a notary public.

11 4. Failure to discharge fully and faithfully any of the duties or
12 responsibilities required of a notary public.

13 5. The use of false or misleading advertising in which the notary
14 public has represented that the notary public has duties, rights or
15 privileges that the notary public does not possess by law.

16 6. Charging more than the fees authorized by statute or rule.

17 7. The commission of any act involving dishonesty, fraud or deceit
18 with the intent to substantially benefit the notary public or another person
19 or to substantially injure another person.

20 8. Failure to complete the acknowledgment or jurat at the time the
21 notary's signature and seal are affixed to the document.

22 9. Failure to administer the oath or affirmation required at the time
23 of performing a jurat for an individual.

24 10. Execution of any notarial certificate by the notary public
25 containing a statement known by the notary public to be false.

26 11. The return for insufficient funds or any other reason for
27 nonpayment of a check issued for application fees to the secretary of state
28 or the bond filing fees to the clerk of the superior court in the applicant's
29 county of residence.

30 12. NOTARIZING A DOCUMENT THAT CONTAINS NO NOTARIAL CERTIFICATE.

31 B. If an application is denied the secretary of state shall notify the
32 applicant within thirty days after receipt of the application and shall state
33 the reasons for the denial.

34 C. THE SECRETARY OF STATE MAY SUSPEND THE COMMISSION OF A NOTARY FOR
35 AT LEAST THIRTY DAYS AND FOR NOT MORE THAN ONE HUNDRED EIGHTY DAYS.

36 D. IF A PERSON HAS HAD A NOTARY COMMISSION IN THIS STATE REVOKED, THE
37 SECRETARY OF STATE MAY REFUSE TO APPOINT THE PERSON AS A NOTARY PUBLIC FOR
38 FOUR YEARS FROM THE DATE OF THE REVOCATION.

39 E. On revocation OR SUSPENSION of a notary public's commission,
40 the secretary of state shall give notice to the notary public and shall
41 provide the person with notice of the opportunity for a hearing on the
42 revocation OR SUSPENSION PURSUANT TO CHAPTER 6, ARTICLE 10 OF THIS
43 TITLE. The revocation OR SUSPENSION of a notary public commission is an
44 appealable agency action.

1 Sec. 8. Section 41-331, Arizona Revised Statutes, is amended to read:

2 41-331. Complaints; investigations

3 A. Any person may make a complaint to the office of the secretary of
4 state regarding a notary public. The secretary of state shall receive any
5 complaints and shall provide notice of those complaints to the office of the
6 attorney general who shall investigate and take action on all complaints
7 involving allegations of any violations of this article.

8 B. A NOTARY'S FAILURE TO RESPOND TO AN INVESTIGATION IS A FAILURE BY
9 THE NOTARY TO FULLY AND FAITHFULLY DISCHARGE THE RESPONSIBILITIES AND DUTIES
10 OF A NOTARY.

APPROVED BY THE GOVERNOR APRIL 7, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2004.

Passed the House March 8, 2004,

Passed the Senate March 31, 2004,

by the following vote: 58 Ayes,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

0 Nays, 2 Not Voting

Jake Dolake
Speaker of the House

Ken Blumett
President of the Senate

Norman L. Moore
Chief Clerk of the House

Charmaine Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

1st day of April, 2004,

at 1:40 o'clock P. M.

Jennifer Upbar
Secretary to the Governor

Approved this 7 day of

April, 2004,

at 10²⁵ o'clock A. M.

Jan Nagel
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7 day of April, 2004,

at 12:18 o'clock P. M.

Janice K. Brewer
Secretary of State

H.B. 2253